



Maxwell C. Bailey
Secretary of Transportation


Commonwealth of Kentucky
Transportation Cabinet
Frankfort, Kentucky 40622

Ernie Fletcher
Governor

MEMO

Date: January 9, 2004

To: Bob Lewis
Division of Construction

From: Rick Stansel 
Division of Contract Procurement

Re: Washington County - PCN 030713
STPR 150-1 (89)
Nally & Haydon LLC & Subs.

Accompanying this memo is your copy of the Detailed Plan/Subcontract Requests, Sub-Contract Agreements and Certificates of Insurance for this project. The established goal for this project was 4%. Contract Procurement has reviewed and approved 6.24%. A work order was issued for this project on January 6, 2004.

CC: Dexter Newman
Arthur McKee

Reviewed & approved:
11/6/04

KENTUCKY TRANSPORTATION CABINET
DEPARTMENT OF HIGHWAYS
DIVISION OF CONSTRUCTION
DBE Detailed Plan/SUBCONTRACT REQUEST

PROJECT CODE NO : 03-0713
DBE Firm/Subcontract # : N H Stone, Inc
TO : Rick Stansel
FROM : Executive Director Division of Contract Procurement
Nally & Haydon, LLC & Subs
Prime Contractor

SUBJECT : Washington County STPR 150-1 (89)
I hereby request to utilize for DBE participation a portion of the subject project to:
N H Stone, Inc. of P O Box 239, Sharpsburg, KY 40374
DBE Employer Identification Numbers: Federal KY 070049
The amount to be subcontracted by this request is DBE \$381,872.37 or 6.24% of the
(original contract) or a subcontract amount of \$ 6,115,876.92

I have previously requested approval for subcontracts or agreements with other DBE as follows:

Name of DBE firm	DBE Amount	DBE %	Contract "Worth" Amount	Contract %
Totals based on original contract Amounts	\$381,872.37	6.24%	\$386,014.78	6.31%

This section applicable if DBE firm is also a Subcontractor of work on Project:

This subcontractor has been furnished a copy of Appendix B of 49 CFR Part 29 and advised to include the Certification in all lower tier covered transactions and in all solicitations for lower tier transactions (Federal Aid Contracts only).

The proposed subcontractor is on the Department's list of qualified contractors and has current insurance coverage: Policy Number CO 979X7846 with

Travelers Property & Casualty Ins Co which expires on January 01, 2005
Name of Insurance Company
John H. Hays v.p. 12/31/03
Prime Contractor's Signature Date

KENTUCKY TRANSPORTATION CABINET
DEPARTMENT OF HIGHWAYS
DIVISION OF CONSTRUCTION
DBE Detailed Plan/SUBCONTRACT REQUEST

TC 63-35 DBE
 Rev. 04/16/02

Page 2 of 3

Project Code Number (PCN) 03-0713 Prime Nally & Haydon, LLC & Subs DBE Firm N H Stone, Inc.

(*) When description is limited by such as "Laying Only" "Erection Only" "Manipulation Only" etc. it should be so indicated and explained.

(**) When the quantity is not the entire amount of (Contract) or (Sub-Contract) estimate, limitations by stations must be shown or definitely designated in some suitable, positive manner.

Unit prices using Contract Unit Price should be for Bid Unit Price for work to be performed by Sub Contractor. DBE Unit price should be for the agreed upon price for item or portion of item of contract work.

DBE Participation Non-Pay Estimates Work Items

Description	Total Contract Quantity	Unit	DBE Unit Price	Dollar Amount based on DBE Price	Comments
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KENTUCKY TRANSPORTATION CABINET
DEPARTMENT OF HIGHWAYS
DIVISION OF CONSTRUCTION
DBE Detailed Plan/SUBCONTRACT REQUEST

TC 63-35 DBE
Rev. 06/11/02

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Project Code Number (PCN): **03-0713** DBE Firm **N H Stone, Inc.**

*) When description is limited by such as "Laying Only" "Erection Only" "Manipulation Only" etc. it should be so indicated and explained.

**) When the quantity is not the entire amount of (Contract) or (Sub-Contract) estimate, limitations by stations must be shown or definitely designated in some suitable, positive manner.

Unit prices using Contract "worth" Unit Price should be for Bid Unit Price for work to be performed by Sub Contractor. If partial work item ie "laying only" then use agreed to price for Contract "worth" Unit Price. DBE Unit price should be for the agreed upon price for item or portion of item of contract work.

The Items to be subcontracted are as follows:

Estimate Sub Section Seq. #	Proposal Item No.	Description	Unit	Contract Quantity	Contract "Worth" Unit Price	Dollar Amount based on Contract Price	DBE Quantity	DBE Unit Price	Dollar Amount based on DBE Price
A016	4	Guardrail Steel "W" BM-S Face	If	100.0000	\$79.70	\$7,970.00	100.0000	\$79.70	\$7,970.00
A017	29	Guardrail Steel W Beam S Face	If	8,248.0000	\$9.95	\$82,067.60	8,248.0000	\$9.95	\$82,067.60
A018	30	Guardrail Steel Terminal Sect No 1	ea	9.0000	\$32.40	\$291.60	9.0000	\$32.40	\$291.60
A019	31	Guardrail End Treatment Type 3	ea	2.0000	\$380.00	\$760.00	2.0000	\$380.00	\$760.00
A020	32	Guardrail End Treatment Type 4A	ea	18.0000	\$1,450.00	\$26,100.00	18.0000	\$1,450.00	\$26,100.00
A023	33	Remove Guardrail	If	1,117.0000	\$2.00	\$2,234.00	1,117.0000	\$1.15	\$1,284.55
A049	36	Remove & Reset Marker	ea	2.000000	\$46.00	\$92.00	2.000000	\$46.00	\$92.00
A050	62	Seeding & Protection	sqyd	221,000.000000	\$0.27	\$59,670.00	221,000.000000	\$0.27	\$59,670.00
A051	63	Temp Seeding & Protection	sqyd	21,000.00	\$0.18	\$3,780.00	21,000.00	\$0.18	\$3,780.00
A052	64	Special Seeding Crown Vetch	sqyd	3,222.00	\$0.230000	\$741.06	3,222.00	\$0.23	\$741.06
A062	65	Erosion Control Blanket	sqyd	9,755.00	\$1.16	\$11,315.80	9,755.00	\$1.16	\$11,315.80
A063	75	R/W Marker Rural Type 1	ea	57.00	\$72.00	\$4,104.00	57.00	\$72.00	\$4,104.00
A083	76	R/W Marker Rmunicipal Type 1	ea	7.00	\$67.00	\$469.00	7.00	\$67.00	\$469.00
A084	96	Green Ash	ea	230.00	\$12.60	\$2,898.00	230.00	\$12.60	\$2,898.00
A085	97	Hackberry	ea	131.00	\$12.60	\$1,650.60	131.00	\$12.60	\$1,650.60
A086	98	Black Cherry Tree	ea	197.00	\$12.60	\$2,482.20	197.00	\$12.60	\$2,482.20
A087	99	Shellbark Hickory	ea	99.00	\$12.60	\$1,247.40	99.00	\$12.60	\$1,247.40
A088	100	Silky Dogwood	ea	131.00	\$12.60	\$1,650.60	131.00	\$12.60	\$1,650.60
A089	101	Coralberry Shrub	ea	262.00	\$12.60	\$3,301.20	262.00	\$12.60	\$3,301.20
A090	102	Elderberry	lb	262.00	\$12.60	\$3,301.20	262.00	\$12.60	\$3,301.20
A091	103	Grass Seeding	sqyd	46.00	\$23.37	\$1,075.02	46.00	\$23.37	\$1,075.02
A098	104	Erosion Control Blanket	ea	5,470.00	\$1.65	\$9,025.50	5,470.00	\$1.65	\$9,025.50
A064	111	Live Stakes	ft	13,200.00	\$5.05	\$66,660.00	13,200.00	\$5.05	\$66,660.00
	77	Fence - Woven Wire Type 1		26,608.00	\$3.50	\$93,128.00	26,608.00	\$3.38	\$89,935.04

Comments:

Page Total **\$386,014.78**

\$381,872.37

SUBCONTRACT

THIS SUBCONTRACT, made and entered into this 31 day of December, 2003 by and between **NALLY & HAYDON, LLC of 40 Lucknow Court, Bardstown, Kentucky 40004** (hereinafter "Contractor") and **N. H. STONE, INC. of P O Box 239, Sharpsburg, Kentucky 40374** (hereinafter "Subcontractor", whether one or more).

WITNESSETH: Whereas Contractor has heretofore contracted with Commonwealth of Kentucky, Frankfort KY 40622 (hereinafter "Owner"), by written Contract (hereinafter "Prime Contract") for the construction project described as **STPR 150-1 (89) Washington County** (hereinafter referred to as the "Project"), and the parties hereto desire that Subcontractor shall perform certain work in connection therewith;

IT IS THEREFORE contracted and agreed between the Contractor and Subcontractor as follows:

I. Description Of Work. Subcontractor shall furnish all materials, supplies, labor, supervision, tools, machinery, equipment, services and other items required to fully complete the portion of work on the Project as described herein, and shall fully perform the following items of work, namely:

<u>ITEM</u> <u>NO</u>	<u>DESCRIPTIONS OF ITEMS</u>	<u>ESTIMATED</u> <u>QUANTITIES</u>	<u>UNIT</u>	<u>UNIT</u> <u>PRICES</u>	<u>EXTENDED</u> <u>AMOUNT</u>
4	Guardrail-Steel W BM-S Face BR	100.00	Lin Ft	79.70	\$7,970.00
29	Guardrail-Steel W Beam-S Face	8,248.00	Lin Ft	9.95	82,067.60
30	Guardrail Terminal Sect No 1	9.00	Each	32.40	291.60
31	Guardrail End Treatment Type 3	2.00	Each	380.00	760.00
32	Guardrail End Treatment TY 4A	18.00	Each	1,450.00	26,100.00
33	Remove Guardrail	1,117.00	Lin Ft	1.15	1,284.55
36	Remove & Reset R/W Marker	2.00	Each	46.00	92.00
62	Seeding and Protection	221,000.00	Sq Yd	0.27	59,670.00
63	Temp Seeding and Protection	21,000.00	Sq Yd	0.18	3,780.00
64	Special Seeding Crown Vetch	3,222.00	Sq Yd	0.23	741.06
65	Erosion Control Blanket	9,755.00	Sq Yd	1.16	11,315.80
75	R/W Marker Rural Type 1	57.00	Each	72.00	4,104.00
76	R/W Marker Municipal Type 1	7.00	Each	67.00	469.00
77	Fence-Woven Wire Type 1	26,608.00	Lin Ft	3.38	89,935.04
96	Green Ash	230.00	Each	12.60	2,898.00
97	Hackberry	131.00	Each	12.60	1,650.60
98	Black Cherry Tree	197.00	Each	12.60	2,482.20
99	Shellbark Hickory	99.00	Each	12.60	1,247.40
100	Silky Dogwood	131.00	Each	12.60	1,650.60
101	Coralberry Shrub	262.00	Each	12.60	3,301.20
102	Elderberry	262.00	Each	12.60	3,301.20
103	Grass Seedling	46.00	LB	23.37	1,075.02
104	Erosion Control Blanket	5,470.00	Sq Yd	1.65	9,025.50
111	Live Stakes	13,200.00	Each	5.05	<u>66,660.00</u>
	Total				\$381,872.37

II. Subcontract Price. Subcontractor shall be paid by Contractor, for the satisfactory performance and completion of Subcontractor's work described herein and all of the duties, obligations and responsibilities of the Subcontractor under the Subcontract Documents, at the rate of the unit prices set forth in Paragraph I of this Subcontract (hereinafter called the "Subcontract Price"), subject to additions and deductions as provided herein. It is specifically understood and agreed by Subcontractor that the quantities of items set forth in Paragraph I are estimated quantities only and that the earnings of Subcontractor under this Agreement shall be determined by the quantities of work that are actually allowed and paid to Contractor by Owner.

The Subcontract Price includes all federal, state, county, municipal, and other taxes and assessments imposed by law and based upon labor, services, materials, equipment or other items acquired, performed, furnished or used for or in connection with the Subcontractor's work, including but not limited to sales, use and personal property taxes payable by or levied against the Owner, General Contractor, or the Subcontractor. Where the law requires any such taxes or assessments to be stated and charged separately, the total price of all items included in Subcontractor's work, plus the amount of such taxes shall not exceed the Subcontract Price. Contractor in its sole discretion may elect to retain part or all of any salvageable materials on the Project.

III. Subcontract Documents. The Subcontract Documents consist of (1) this Agreement; (2) the Prime Contract, consisting of the Agreement between the Owner and Contractor and the other Contract Documents enumerated therein, including but not limited to the Conditions of the Contract (General, Special, Supplementary and other Conditions), Drawings, Plans, Specifications, Addenda and Modifications, whether issued before or after the execution of this Agreement, and other Contract Documents, if any, listed in the Owner-Contractor Agreement; (3) any other documents specifically incorporated into this Subcontract by reference herein; and (4) Modifications to this Subcontract issued after the execution hereof, all of which are hereby referred to and made a part of this Subcontract as though copied at length herein (and all of which documents are hereinafter collectively referred to as the "Subcontract Documents").

This Subcontract shall be performed in strict accordance with the Subcontract Documents and to the satisfaction of Contractor and Owner. The Subcontractor represents and agrees that it has carefully examined and understands the Subcontract Documents, copies of which have been and remain available for inspection and copying by Subcontractor, that it has investigated the nature, locality and site of the Project and the conditions and difficulties under which it is to be performed, and that it enters into this Agreement on the basis of its own examination, investigation and evaluation of all of such matters and not in reliance upon any opinions or representations of Contractor, Owner, or any of their respective officers, agents, servants or employees.

IV. Payment.

(a) Progress Payments. Subcontractor shall be paid by Contractor at the rate of the unit prices listed in Paragraph I for all work performed and materials and supplies furnished, within seven (7) working days after the Contractor receives payment from the Owner, payment to Subcontractor being expressly conditioned upon Contractor's prior receipt of payment from Owner. It is specifically understood and agreed by Subcontractor that no payment by Contractor to Subcontractor shall be construed as acceptance of any portion of Subcontractor's Work, a waiver of any defect or deficiency in Subcontractor's performance, or relieve Subcontractor of any of its obligations arising out of this

Agreement. Should Contractor at any time determine that payment has been made to Subcontractor, or on Subcontractor's behalf, in excess of the amount then due for work under this Agreement, then Subcontractor shall promptly repay such excess to Contractor within three (3) days of demand for repayment.

(b) Final Payment. Final Payment shall be made by Contractor to Subcontractor within thirty (30) days after completion and acceptance of the Subcontractor's work by Contractor and the Owner, provided that (1) Contractor shall have first received final payment from the Owner; (2) Subcontractor shall have furnished, if requested, evidence satisfactory to Contractor that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, materials, equipment, taxes or other items performed, furnished or incurred for or in connection with the Subcontractor's work; and (3) Subcontractor shall have executed and delivered to Contractor, in a form satisfactory to Contractor, a Release of Lien and an Affidavit of Payment running to and in favor of Contractor and the Owner.

(c) Payments Withheld. Subcontractor shall meet all of its obligations and liabilities pertaining to this Subcontract on a timely basis and shall furnish at any time requested, evidence satisfactory to Contractor that there are no claims outstanding or unsatisfied for labor, services, materials, equipment, taxes or other items performed, furnished or incurred for or in connection with the Subcontractor's work. In the event that Subcontractor does not comply with the above, Contractor may retain from monies owing to Subcontractor sufficient sums to indemnify Contractor and Owner against any claims or obligations related to this Subcontract. Contractor may disburse monies owing to the Subcontractor as Contractor may determine necessary, including by joint check arrangements or payments directly to persons or entities claiming by or through Subcontractor, to satisfy the above claims against or obligations of Subcontractor. Should Contractor advance money to Subcontractor or pay on his behalf any bills, accounts, labor or other items, such advances, disbursements and payments may be deducted from amounts due or to become due to Subcontractor or the retained percentage, at the option of Contractor. Should such advances and payments be in excess of the total amount finally due Subcontractor, then Subcontractor shall promptly repay such excess to Contractor on demand.

V. Date of Commencement and Completion. Time is of the essence in the Prime Contract and is hereby declared to be of essence in this Subcontract. Subcontractor shall prosecute the Subcontract work with all possible diligence and all possible speed in order to insure completion of the work at the earliest possible date and shall fully cooperate with Contractor in scheduling and performing the Subcontract Work to avoid conflict, delay in or interference with the Work of the Contractor or others upon the Project.

Subcontractor shall begin its work within five (5) days of notice to proceed by Contractor. In the event that Subcontractor does not perform its work promptly and the completion of the Project is thereby delayed, then Subcontractor shall assume and pay any damages, including but not limited to any liquidated damages provided by the Prime Contract, that may be incurred by or assessed against the Contractor.

The work of this Subcontract shall be completed not later than 110 working days as per proposal, subject to adjustments of this Subcontract Time as provided in the Subcontract Documents.

No extension of time will be valid without the Contractor's prior written consent after written claim for adjustment made by the Subcontractor.

Contractor shall not be liable to Subcontractor for any costs or damages due to delays, escalation, accelerations, nonperformance, interferences with performance, suspensions, or changes in the performance or sequence of the Subcontractor's work. Should this Agreement, in whole or in part, be interfered with or delayed, or be suspended in commencement, prosecution or completion, for reasons beyond the Subcontractor's control, without its fault or negligence, Subcontractor shall be entitled to, and shall be fully compensated by, an extension of time in which to complete its work; but, only if Subcontractor shall have first notified Contractor in writing of the cause of delay within two (2) days of the occurrence of the event, and on the further condition that Contractor shall have received a similar extension of time from the Owner.

VI. Interruption of Work. Subcontractor shall not employ any men or means of construction which may cause strikes, work stoppages, work interruption or hindrance, or any other disturbances, of any nature whatsoever, by Contractor's employees or the employees of any other contractor or subcontractor on the Project, with respect to any work related to this Subcontract Agreement and the Project.

VII. Subcontractor Default. Should the Subcontractor fail, in the opinion of Contractor, to prosecute the work with sufficient force and speed, or default or neglect to carry out the work in accordance with this Subcontract, or cause by any act or omission the stoppage or delay of or interference with or damage to the work of Contractor or of any other Contractors or Subcontractors on the Project, including but not limited to any violation of the provisions of Paragraph VI above, or fail in the performance of any of the terms and provisions of this Agreement or the Subcontract Documents, or should the Owner or Contractor determine that Subcontractor's work or any portion thereof is not being performed in accordance with the Subcontract Documents, or should there be filed by or against Subcontractor a Petition in Bankruptcy, or should the Subcontractor become insolvent or be adjudicated bankrupt, or go into liquidation or dissolution, either voluntarily or involuntarily, or make a general assignment for the benefit of creditors, or otherwise acknowledge insolvency, then in any of such events, each of which shall constitute a default hereunder by Subcontractor, and Subcontractor fails within three (3) working days after receipt of written notice from the Contractor to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, at its option and in addition to any other rights and remedies provided by this Agreement or by law, elect to proceed in any one or more of the following manners:

(1) Contractor may employ and use on said work, or any portion thereof, such number of workmen, laborers, supervisors, teams, tools, machinery, equipment and/or other subcontractors, at such wages, prices and rentals as Contractor may deem necessary and expedient to insure the prompt completion of the work and Project, and it shall charge all of same to Subcontractor;

(2) Contractor may relet the work, either in whole or in part, to such other persons or entities as it may desire, at such prices as it may deem proper, and shall charge the costs thereof to Subcontractor;

(3) Contractor may declare the rights of Subcontractor under this Agreement to be terminated and, in such event, Subcontractor shall only be paid for the actual work done by it to the

date of termination, less the amount of any damages, claims, obligations or liabilities incurred by Contractor or Owner by virtue of Subcontractor's actions:

(4) Contractor may terminate the employment of Subcontractor for all or any portion of the Subcontractor's work, enter upon the premises and take possession of, for the purpose of completing the Subcontractor's work, all materials, equipment, tools, appliances and other items thereon, all of which the Subcontractor hereby transfers, assigns and sets over to Contractor for such purpose, and to employ any person or persons to complete the Subcontractor's work and provide all of the labor, services, materials, equipment and other items required therefor. In any such event, Subcontractor shall remain bound, and all other terms of this Agreement shall remain in force, to the extent of the work or areas which have not been so terminated. In case of such termination of Subcontractor, it shall not be entitled to receive any further payment under this Agreement until the Subcontractor's work shall be fully completed to the satisfaction of Contractor and the Owner and shall have been accepted by them, at which time, if the unpaid balance of the amount to be paid under this Subcontract shall exceed the costs, and expenses, incurred by Contractor in completing the Subcontractor's work, such excess shall be paid to Subcontractor; but in the event that such costs, and expenses, shall exceed the unpaid balance of the Subcontract price, then Subcontractor shall pay the difference to Contractor upon demand.

For purposes of this Paragraph VII, the costs and expenses recoverable by Contractor from Subcontractor for Subcontractor default shall include, in addition to the costs of completing the Subcontractor's work to the satisfaction of Contractor and the Owner and of performing and furnishing all labor, services, materials, equipment and other items required therefor, but also all losses, damages, claims, obligations, liabilities, costs and expenses, including attorneys' fees, incurred or suffered by Contractor by reason of or resulting from the Subcontractor's default.

VIII. Changes. Subcontractor may, at any time during the progress of Subcontractor's work, be ordered in writing by Contractor, without invalidating this Subcontract, to make changes in the work of this Subcontract consisting of additions, deletions, deviations, or other revisions, including those required by modifications to the Prime Contract issued subsequent to the execution of this Agreement, the Subcontract Price and the Subcontract Time being adjusted accordingly. Subcontractor shall, prior to the commencement of such changed or revised work, submit promptly to Contractor written copies of a claim for adjustment to the Subcontract Price and Subcontract Time for such revised work in a manner and time consistent with the requirements of the Subcontract Documents. No change orders or modifications of this Subcontract, whether for extras or otherwise, shall be valid unless authorized by the Contractor in writing after receipt of Subcontractor's claim for adjustment. Failure of the Subcontractor to make such a timely claim for adjustment shall bind the Subcontractor to the same consequences as those to which the Contractor is bound to the Owner.

In the event that Contractor and Subcontractor should not be able to agree as to the amount to be allowed as an adjustment to the Subcontract Price and Subcontract Time for any changes made pursuant to this Paragraph VIII, it shall, nevertheless, be the duty of Subcontractor to proceed immediately with such change(s) upon written notice from Contractor. In any such event the determination of the appropriate adjustment to the Subcontract Price and Subcontract Time for such revised work shall be resolved thereafter by mutual agreement or in accordance with Paragraph XIII below pertaining to dispute resolution.

Subcontractor shall also be bound by any price adjustment for fuel as related to Subcontractor's work if such fuel adjustment clause is contained in the Prime Contract.

IX. Insurance. Subcontractor binds itself to procure and maintain at Subcontractor's expense Workers' Compensation Insurance, Comprehensive General Liability Insurance, Property Damage Insurance and Automobile Liability Insurance with a financially sound insurance company or companies acceptable to Contractor on all activities and work performed under this Agreement and to provide Contractor with Certificates of Insurance establishing compliance with the above insurance requirements. All insurance, policies and certificates of insurance required by this paragraph shall contain a provision that coverages afforded under the applicable policies cannot be cancelled or allowed to expire without a minimum of ten (10) days prior written notice to Contractor. The minimum limits of insurance coverage required by this paragraph shall be as provided by the Prime Contract, or in the absence of any such provision therein, in the following minimum limits of coverage:

<u>Type Insurance</u>	<u>Minimum Policy Limits</u>
Workers' Compensation Insurance	
Coverage A	As required by statute
Coverage B (Employers Liability)	\$100,000 each accident
	\$500,000 disease
	policy limit
	\$100,000 disease each
	employee
Comprehensive General Liability Insurance (Occurrence Form, including coverage for subcontractors, if any)	
General Policy	\$1,000,000 aggregate
Products - Completed Operations	\$1,000,000 aggregate
Personal Injury	\$1,000,000 per person
	\$1,000,000 per occurrence
Property Damage Insurance	\$1,000,000 per occurrence
	\$1,000,000 aggregate
Automobile Liability Insurance (Including Owned, Non-Owned and Hired)	\$1,000,000 combined
	single limit

Subcontractor does hereby waive all rights against the Contractor and Owner, and their respective officers, agents and employees, for damages, loss, liabilities and expense to the extent covered by insurance provided or required to be procured and maintained under the provisions of this Paragraph IX, and all other insurance applicable to the work under this Subcontract, including but not limited to insurance provided under Worker's Compensation Acts, and Disability and Employee Benefit Acts.

X. Performance and Payment Bonds. In lieu of furnishing Contractor total payment and performance bond, pro-rata deductions for bond charges will be deducted from pay to Subcontractor as work progresses.

XI. Indemnification. Subcontractor shall, to the fullest extent permitted by law, indemnify and hold harmless the Owner, Contractor, and their respective officers, agents and employees from and against all claims, damages, demands, losses and expenses, of whatever nature, including but not limited to attorneys' fees, arising out of or in any way related to the performance of Subcontractor's Work under this Subcontract, to the extent caused in whole or in part by any negligent act or omission of the Subcontractor or Subcontractor's agents, employees or anyone claiming by or through Subcontractor, regardless of whether such claim, damage, loss or expense is caused or alleged to have been caused in part by a party indemnified hereunder. With respect to claims against any person or entity indemnified under this paragraph by any employee of the Subcontractor, anyone directly or indirectly employed by Subcontractor, or anyone for whose acts Subcontractor may be liable, the indemnification obligation provided herein shall not be limited in any way by a limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor or others under workers' compensation acts, disability benefit acts, or other employee benefit acts.

XII. Warranty. Subcontractor warrants to the Contractor and Owner that all materials and equipment furnished under this Subcontract will be of good quality and new unless otherwise required or permitted by the Subcontract Documents, that the work of this Subcontract will be free from defects not inherent in the quality required or permitted, and that Subcontractor's warranty and work will conform in all respects with the requirements of the Prime Contract and the Subcontract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. This warranty shall be in addition to and not in limitation of any other warranty or remedy provided by law or by the Subcontract Documents.

XIII. Dispute Resolution. Any claim, controversy or dispute between the Contractor and Subcontractor arising out of or related to this Subcontract, or a breach hereof, and which claim, controversy or dispute is not resolved by mutual agreement between the parties, shall, unless otherwise required by the Prime Contract or applicable law, be submitted to a judicial court of competent jurisdiction within Nelson County, Kentucky. The Subcontractor further covenants and agrees that no dispute shall interfere with the progress of Subcontractor's work, and the Subcontractor agrees to proceed with the Subcontract Work as required in spite of any claim, controversy or dispute it may have with Contractor, the Owner or other parties.

XIV. Laws, Permits, Fees and Notices. The Subcontractor shall give all notices required by and comply with all laws, ordinances, rules, regulations and orders of any public authorities applicable to the performance of the Subcontract Work. The Subcontractor shall secure and pay for all permits, fees, licenses and inspections necessary for proper execution and completion of the Subcontractor's work as required by the Subcontract Documents.

Subcontractor further covenants and agrees to pay its own payrolls, taxes and all other costs and expense associated with the work required under this Agreement; furnish Contractor with copies of all weekly payrolls and other documentation showing compliance with applicable laws and regulations, if required; furnish Contractor with copies of MSDS (Material Safety Data Sheets) for all materials used on the Project and a copy of Subcontractor's written hazard communication program;

and acknowledges and agrees that any payment received by Subcontractor shall be held in trust for the purpose of paying its subcontractors, laborers, materialmen, suppliers and any others claiming by or through Subcontractor and who may be entitled to assert a lien or other claim against the Project.

XV. Removal of Equipment. Subcontractor shall not, without the prior written consent of Contractor, remove or permit to be removed from the Project any equipment, machinery, tools, materials, supplies or other items that have been purchased for or placed on the Project for use in connection therewith until the Subcontract Work has been completed.

XVI. Cleanup. Subcontractor shall keep the Project site and surrounding area free from accumulation of waste materials or rubbish caused by operations performed under this Subcontract and shall, upon completion of its work, leave the Project site in a clean and orderly condition.

XVII. Association Dues. Subcontractor agrees to pay its proportionate share of Kentucky Association of Highway Contractor's (KAHC) dues.

XVIII. Equal Employment Opportunity and Affirmative Action. Subcontractor shall not discriminate against any employee or applicant for employment because of race, creed, color, sex, age, religion, national origin, physical or mental handicap, or because he or she is a disabled veteran or veteran of the Vietnam era. Subcontractor agrees to take affirmative action to insure that qualified applicants are employed, and that employees are treated during employment, without regard to race, creed, color, sex, age, religion, national origin, physical or mental handicap, or status as a disabled veteran or veteran of the Vietnam era. To the extent applicable, Subcontractor shall comply with all provisions of Executive Order No. 11246, dated September 24, 1976; the Vietnam Era Veterans Readjustment Assistance Act of 1974, the Rehabilitation Act of 1973, and all amendments thereto, and all rules, regulations, orders, instructions, designations and other directives promulgated pursuant thereto, the terms of all of which are incorporated herein by reference. Violation of this provision shall be considered a material breach of this Subcontract and shall entitle Contractor to exercise any of the options set forth in Paragraph VII hereof, including termination or suspension of this agreement in whole or in part.

XIX. Assignment. Subcontractor shall not sublet or assign any portion of this Subcontract, nor any monies due or to become due, or Subcontractor's earnings and compensation hereunder, without the prior written consent of Contractor. Any such assignment or subletting without prior written consent of Contractor shall be void and of no effect.

XX. Notice. All notices, demands and other communications provided for herein shall, unless otherwise provided, be sufficient if in writing and if delivered personally to the other party, or mailed by United States Mail, postage prepaid, to the respective addresses of Contractor and Subcontractor as set forth hereinabove, or such other address as either may have designated from time to time. Contractor may exercise any right given to it immediately after mailing the letter containing such notice; however, this does not preclude a Contractor from giving notice in any other legal matter.

XXI. Governing Law. This Agreement shall be governed by the laws of the Commonwealth of Kentucky.

XXII. Severability and Waiver. The partial or complete invalidity of any one or more provisions of this Agreement and the Subcontract Documents shall not affect the validity or continuing force and

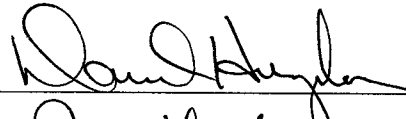
effect of any other provision or the application of such provisions to persons and circumstances other than those as to which it is determined invalid or unenforceable. The failure of Contractor to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Agreement or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right.

XXIII. Uniform Construction of Agreement. Contractor and Subcontractor mutually agree that the interpretation, construction and enforcement of this Agreement shall be uniform in all respects and shall not be construed more or less favorably for either Contractor or Subcontractor.

XXIV. Entire Agreement. This Subcontract represents the entire and integrated agreement between the Contractor and Subcontractor and supersedes all prior negotiations, representations, or agreements, either written or oral, and shall not be altered, modified or amended in any manner whatsoever unless the same shall be in writing and signed by the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Subcontract, or have caused it to be executed by their duly authorized officers this 31 day of December 2003.

NALLY & HAYDON, LLC

By: 
Title: President

N. H. STONE, INC.

By: N. H. Stone III
Title: Vice-President

STATE OF KENTUCKY
COUNTY OF NELSON

The foregoing Subcontract was this 31 day of December 2003, subscribed, sworn to and acknowledged before me by David Haydon in his capacity as President of Nally & Haydon, LLC.


NOTARY PUBLIC

My Commission Expires: July 29, 2007

STATE OF Kentucky

COUNTY OF Bath

The foregoing Subcontract was this 29th day of December, 2003, subscribed, sworn to and acknowledged before me by N.H. Stone, III in his capacity as Vice-President of **N. H. Stone, Inc.**

Joseph F. Clark
NOTARY PUBLIC

My Commission Expires: 02-05-04

Client#: 42583

NHSTO

ACORD™ CERTIFICATE OF LIABILITY INSURANCEDATE (MM/DD/YYYY)
12/31/03

PRODUCER Lexington - Commercial Palmer & Cay, Inc. 360 East Vine Street Lexington, KY 40507		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED N. H. Stone, Inc. P. O. Box 239 Attention: Fred Clark Sharpsburg, KY 40374		INSURERS AFFORDING COVERAGE INSURER A: Travelers Prop Cas Ins Co INSURER B: AIK Comp INSURER C: Chubb Indemnity Insurance Co INSURER D: INSURER E:	NAIC #

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	CO979X7846	01/01/04	01/01/05	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	\$1,000,000 \$300,000 \$5,000 \$1,000,000 \$2,000,000 \$2,000,000
A		AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	810979X7846	01/01/04	01/01/05	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	\$1,000,000 \$ \$ \$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT OTHER THAN EA ACC AUTO ONLY: AGG	\$ \$ \$
A		EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$ 10000	CUP979X7846	01/01/04	01/01/05	EACH OCCURRENCE AGGREGATE	\$5,000,000 \$5,000,000 \$ \$ \$
B		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	1041	01/01/04	01/01/05	WC STATU-TORY LIMITS E.I. EACH ACCIDENT E.I. DISEASE - EA EMPLOYEE E.I. DISEASE - POLICY LIMIT	\$ \$2,000,000 \$2,000,000 \$2,000,000
C		OTHER Excess Comm. Excess Liability	79815122	01/01/04	01/01/05	\$5,000,000 Ea. Occur. \$5,000,000 Aggregate	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Washington County, KY STPR 150-1(89)

CERTIFICATE HOLDER
Nally & Haydon, LLC
Attn: Bridget Ralston
40 Lucknow Court
Bardstown, KY 40004
CANCELLATION
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

C. P. B. 